REMARKS

The Non-Final Office Action of March 13, 2007 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application is respectfully requested in view of the remarks presented in this response.

Claims 1-12 and 15-34, and new Claims 35-40 are pending in this application. The Office Action rejected claims 1-12 and 15-34.

Claim Objections

Claims 8 and 12 are objected to because of informalities. Applicant has corrected these informalities and appreciates the Examiner noting them.

Claim Rejections Under 35 USC §101

Claims 8, 11-12, 26, 29, 32 and 34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 8, 26 and 32 have been amended to recite *inter alia,* in response to the initiation request, receiving at least one application choices and corresponding links. Further, Applicant notes that Claim 32 recites functionally descriptive material (method steps) that is stored on a computer readable medium, and therefore is statutory. MPEP 2106.01.

Claim Rejections Under 35 USC §102

Claims 1-8, 10-12 and 16-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Gibbons et al. (hereafter Gibbons) (U.S. Publication 2004/0034853). Applicant traverses this rejection.

The Examiner states that Gibbons discloses "generating by the client device in a wireless browser independent manner an initiation request for information describing available applications and for a link to an application descriptor corresponding to each respective available application" and cites Gibbons page 4 paragraph 50, lines 14-17 and paragraph 56; and page 6

paragraphs 75-76. Applicant respectfully notes that Gibbons does not disclose "generating ... in a **wireless browser independent manner ...**". Gibbons discloses at paragraph 50 a wireless data communications facility, but makes no disclosure for generating any request or communications in a wireless browser independent manner. Accordingly, Applicant asserts that Gibbons does not disclose each and every feature of Claim 8.

Further, Applicant notes that Gibbons does not disclose an application descriptor. Gibbons at paragraphs 75 and 76 discloses a WAD (Wireless Application Descriptor). Despite any similarity in names, the WAD described by Gibbons is different from the application descriptor as recited in Claim 8.

An application descriptor is described in the specification of the present invention, *inter alia*, at page 10 lines 7-10 and page 11 lines 8-22. In summary, an application descriptor includes attributes to allow a determination by a client device as to whether the respective application is suitable for the client device. For example, as set forth on page 11 of the specification, whether the client device has a suitable operating environment, proper resolution of the display, etc for the respective application.

The WAD described by Gibbons is entirely different. The WAD contains download instructions for downloading a download object (DO). As set forth in paragraph 60 in Gibbons, the WAD specifies operations such installing a DO, updating a DO, and deleting a DO. As Gibbons states in paragraphs 71 and 80:

> [0071] WAD 130 instructs AM 112 **on the download process for a DO**. A WAD must be employed for each operation to be performed by the AM 112. In an embodiment, there is a separate WAD for each DO. In an alternate embodiment, a single WAD specifies a plurality of DOs. This can be done with a package element defining the plurality of DOs handled by the WAD.

> [0080] After it has received the WAD URI, the AM initiates WAD Downloads 220 in order to retrieve the WAD for further processing. In an embodiment, the WAD is downloaded from the protected domain 140. After the WAD has been received, the AM **begins WAD Execution--DO** Operation 240. In this step, **the AM executes all of the DO operations specified in the WAD**. Examples of DO operations include **installation,**

upgrading, and deletion. These operations are performed in accordance with the AEE of the MT device.
(emphasis added).

This shows that the WAD of Gibbons is completely different from the application descriptor of the present application, and serves a completely different purpose.

The Examiner states that with respect to Claim 10, Gibbons at page 6, paragraphs 79-81, page 9 paragraph 119 and in Figures 6 and 8, that Gibbons discloses a determination based on an application descriptor. Applicant disagrees.

First, as Applicant has previously described, Gibbons does not disclose "a link to an application descriptor". Gibbons describes a link to a WAD, which is a different structure. Second, Gibbons does not disclose the feature of the application descriptor allowing a **client device** to determine if the application is suitable for that client device.

Gibbons at paragraphs 79 through 81 describes a "Capabilities and Preferences Information (CPI) document" stored on the ADS (Application Download Server). The creation of this CPI document is described in paragraph 119: as developers submit applications, the CPI document is updated based on the functionality of devices known by a content provider. If an application is to downloaded, the ADS uses the CPI document to determine whether the application can be downloaded by a client device.

A feature of the present application as claimed is allowing the client device to determine whether an application should be downloaded. The client device can easily obtain the application descriptor (by using the provided link), and then the client device can use the attributes to determine whether an application is suitable for the client device. Gibbons requires the creation and maintenance of a CPI document to match capabilities. This requires overhead by the ADS, and the need to constantly update the CPI document for a stream of new applications, and new or updated client devices. In the present application, this problem is avoided because each client device has the ability to easily obtain application descriptor

attributes, and make the determination. Applicant asserts that Gibbons does not teach or suggest this feature.

Applicant has amended Claim 8 to clarify this difference regarding the link and the application descriptor. Support for this feature may be found *inter alia* in Claim 10, and in the specification on page 10 lines 6-10 and page 11 lines 3-22. Accordingly, Applicant asserts that Gibbons does not disclose or suggest all the features of Claim 8 as amended, and that Claim 8 and all claims dependent upon it are allowable.

Applicant has amended independent Claims 1, 16, 22, 26, 30 and 32 in a similar manner, and asserts that all the above arguments with respect to Claim 8 apply to these claims. Applicant respectfully asserts that these independent claims and all claims that depend upon them are allowable. Applicant has also added new dependent Claims 35-40 which recite further features of the present application. Support for these claims may be found *inter alia* in the specification on page 11 lines 12-22.

With regard to Claim 5, Applicant further notes that Gibbons does not disclose a network server as stated by the Examiner. Gibbons at paragraph 57 discloses a network **operator**, which is a person. Gibbons does not disclose a network server. Therefore Applicant asserts that Claim 5 is allowable independently of it depending from an allowable claim. This same argument applies to Claims 6, 8, 9, 19, 20, 27, and 33.

Claim Rejections Under 35 USC §103

Claims 9, 15 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbons by itself. Applicant traverses this rejection. These claims all depend from allowable independent claims, and are therefore allowable.

Further regarding Claim 15, the Examiner states it is rejected "for the same reason as claim 9". Applicant respectfully notes that Claim 15 recites different language from Claim 9, and no explanation is given as to how Gibbons discloses this language. The same argument applies to Claim 34.

-14-

CONCLUSION

In view of the above amendments and remarks, reconsideration of all pending claims in the application is respectfully requested. All rejections having been addressed, Applicant respectfully submits that the application is in condition for allowance and respectfully requests prompt notification of the same.

If the Examiner should have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

Date: June 13, 2007   By: /David Lowry/
                                                 David D. Lowry
                                                 Registration No. 38,538
                                                 BANNER & WITCOFF, LTD.
                                                 28 State Street, 28th Floor
                                                 Boston, MA 02109-1775
                                                 Telephone: 617-720-9600
                                                 Fax: 617-720-9601